

REMARKS

This Amendment After Final is being filed subsequent to a Request for Reconsideration filed on March 10, 2005, and is in further response to the Final Office Action of September 23, 2004.

In the Final Office Action, the Examiner continued to withdraw claims 21-25 from consideration; rejected claims 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over European Patent Application No. 0,928,680 (EP '680); rejected claim 19 under obviousness-type double patenting over claim 32 of U.S. Patent No. 6,457,504 (the '504 patent) in view of EP '680; and rejected claim 20 under obviousness-type double patenting over claim 32 of the '504 patent in view of EP '680 and further in view of claim 20 of the '504 patent.

Applicant proposes to amend claims 17 and 20, and cancel claim 19 without prejudice or disclaimer to the subject matter thereof. Upon entry of this Amendment After Final, claims 17, 18, and 20-25 will be pending in the above-captioned application, of which claims 17, 18, and 20 are presented for examination, and claims 21-25 are withdrawn from consideration. Applicant's proposed claim changes place this case in condition for allowance, and do not raise new issues requiring further consideration and/or search by the Examiner. Accordingly, entry of this Amendment After Final is respectfully requested.

At the outset, Applicant appreciates the courtesy extended by the Examiner in granting an in-person interview with Applicant's representatives, as well as a telephonic interview with the undersigned, both of which occurred on March 22, 2005. During these conversations, the outstanding rejections were discussed. In particular, the Examiner maintained the rejection of claims 17 and 18 under 35 U.S.C. § 103(a) as

being unpatentable over EP '680, and the double patenting rejections of claims 19 and 20. The Examiner, however, indicated that claims 19 and 20 would be allowable if an appropriate Terminal Disclaimer were filed.

Applicant respectfully traverses the Examiner's rejection of claims 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over EP '680, as well as the Examiner's double patenting rejection of claim 19 over claim 32 of the '504 patent in view of EP '680, and the double patenting rejection of claim 20 over claim 32 of the '504 patent in view of EP '680 and further in view of claim 20 of the '504 patent. In order to expedite prosecution of this case, however, Applicant has cancelled claim 19, and incorporated the subject matter thereof into claim 17. The Examiner did not apply EP '680 alone in rejecting claim 19, and thus the Examiner apparently concedes that claim 19 is not obvious over EP '680 alone. Accordingly, claim 17, as amended, is also allowable over EP '680 taken by itself.

To the extent amended claim 17 is subject to the same double patenting rejection as claim 19, however, Applicant submits herewith a Terminal Disclaimer obviating such double patenting rejection. The filing of this Terminal Disclaimer in no way manifests an admission by Applicant as to the propriety of the double patenting rejection set forth in the Final Office Action. See M.P.E.P §804.02 *citing Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991) ("In legal principle, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection"). Should the need arise at a later date, Applicant reserves the right to present arguments regarding the merits of the double patenting rejection and the

alleged obviousness of amended claim 17 in view of claim 32 of the '504 patent in view of EP '680. Accordingly, Applicant requests approval of the Terminal Disclaimer and the withdrawal of the double patenting rejection.

Claim 20 was also rejected under double patenting over claim 32 of the '504 patent in view of EP '680 and further in view of claim 20 of the '504 patent. As noted above, claim 20 has been amended to depend from claim 17 in order to maintain antecedent basis. Since the double patenting rejection of claim 20 was also based in part on claim 32 of the '504 patent, Applicant submits that the filing of the attached Terminal Disclaimer renders claim 20 allowable as well. Applicant also reserves the right to present arguments regarding the merits of the double patenting rejection and the alleged obviousness of amended claim 20 in view of claims 20 and 32 of the '504 patent and EP '680.

In view of the foregoing, Applicant submits that claim 17 is allowable, and claims 18 and 20 are also allowable at least due to their dependence from claim 17.

Turning to withdrawn claim 21-25, the Examiner stated at page 2 of the Office Action dated March 4, 2004, that "upon the identification of allowable subject matter the examiner will consider rejoinder of any of claims 21-25 which incorporate or otherwise include the allowable subject matter." In light of the Examiner's statement, Applicant points out that claim 17 is allowable for reasons discussed above. Accordingly, Applicant respectfully requests that claims 21-25, which depend from claim 17, should be rejoined and allowed in this case.

In discussing the claims in the Amendment After Final, it is to be understood that Applicant is in no way intending to limit the scope of the claims to any exemplary

embodiments described in the specification or abstract and/or shown in the drawings.

Rather, Applicant believes that Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

In view of the foregoing remarks, Applicant respectfully requests the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: March 23, 2005

By: _____


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Attachments: **Terminal Disclaimer**